

Date of Hearing: July 3, 2012

ASSEMBLY COMMITTEE ON HIGHER EDUCATION  
Marty Block, Chair  
SB 1328 (De Leon) – As Amended: June 26, 2012

SENATE VOTE: 26-13 (This bill has been substantially amended in the Assembly.)

SUBJECT: Postsecondary education: textbooks.

SUMMARY: Requires a publisher to provide textbook data in specified formats; encourages public and private postsecondary institutions to develop faculty textbook adoption search engines with specified functions; and requires campus bookstores at private and public postsecondary institutions to provide a student textbook comparison engine on their Web sites, as specified. Specifically, this bill:

- 1) Requires a publisher that supplies textbooks or other instructional materials to a postsecondary institution or a faculty member of a postsecondary institution to provide specified information about that textbook or item of instructional material using a standard XML or comma-delimited format.
  - a) Provide the following information in the order listed:
    - i) Book title,
    - ii) Author,
    - iii) Publisher,
    - iv) International Standard Book Number (ISBN),
    - v) Retail price,
    - vi) Edition, and,
    - vii) Copyright date.
  - b) Defines the following:
    - i) “Comma-delimited” as a type of data format in which each piece of data is separated by a comma,
    - ii) “ISBN” as the International Standard Book Number, a numeric commercial book identifier,
    - iii) “Postsecondary institution” as both private and public postsecondary institutions, and,
    - iv) “XML” as Extensible Markup Language, which is designed to transport and store data.

- 2) Encourages public and private postsecondary education institutions to provide a faculty textbook adoption search engine for purposes of discovery, evaluation, and selection of course materials that allows faculty or course coordinators to view, compare, and contrast textbooks and other course materials within a given subject area and to communicate their adoption choices to the appropriate procurement staff and colleagues.
- 3) Requires institutions that choose to provide a faculty textbook adoption search engine per #3 above do all of the following:
  - a) Seek out a third-party entity to create and implement the faculty textbook adoption search engine free of charge to the postsecondary educational institution.
  - b) Ensure that the faculty textbook adoption search engine includes all of the following:
    - i) An automated warning system that provides faculty and course coordinators with information on both of the following:
      - (1) Textbook adoption deadlines and the potential costs to students stemming from late adoption, and,
      - (2) Potential consequences related to textbook bundling and customization that may impact student buyback or resale options.
    - ii) The ability to produce reports that include, but are not limited to, a cost index by subject area, each faculty member's place within the cost index, and the timeliness and average on-time rating for faculty adoption submissions. Specifies that the reports shall be accessible to department chairs, school administrators, and state officials, upon approval of the faculty.
    - iii) Ensure that the institutional bookstore, as defined, provides the course and adoption information pursuant to this bill in an open protocol, using either comma delimited format, as defined, or an application programming interface format that allows an outside organization or company full and free access to the information, including but not limited to, the department, course names, course selections, teachers of the courses, and the title and ISBN, as defined, of each book or material required for each course.
      - (1) Requires an institutional bookstore to provide written instructions for an outside organization or company to access the course and adoption information and post the instructions on the institutional bookstore's Internet Web site, and,
      - (2) Requires information collected by the institutional bookstore to be made available to other parties at the same time manner as provided to the bookstore and shall be posted on the bookstore premises or on the bookstore's Internet Web site.
  - c) Defines the following:

- i) "Application programming interface" or "API" means a type of data format that allows software components to communicate with each other.
  - ii) "Open protocol" means a standard way to exchange requests and responses that is publicly available and has various rights of use associated with it.
- 4) Requires institutional bookstores, as defined, to provide a student textbook price comparison engine on its Internet Web site to demonstrate the price difference between a textbook purchased through the bookstore and the same textbook purchased through an online competitor, in order to enable students to ensure they are purchasing the needed textbook at the best price.
- a) Defines the following:
    - i) "Institutional bookstore" means a bookstore that is the official bookstore of a public or private postsecondary educational institution in the state that may be owned and operated by the institution or operated in a space that is leased by the institution to a bookstore management company.
    - ii) "Student textbook price comparison engine" means an online tool that displays the price difference between a textbook offered by an institutional bookstore and by online competitors and that provides a link through which a student may purchase a textbook from an online competitor if he or she desires to do so. Specifies that the student textbook price comparison engine shall include at least two online competitors for each textbook offered by the institutional bookstore, or a lesser number if two competitors do not exist.
  - b) Institutional bookstores at the University of California (UC) are encouraged, but not required, to comply with this section.
- 5) Creates a reimburseable state mandate if so determined by the Commission on State Mandates.

EXISTING LAW: Numerous federal and state laws specify textbook information that publishers and higher education institutions must disclose.

The federal Higher Education Opportunity Act (HEOA) requires publishers, when providing information to faculty or others who select course materials at an institution of higher education receiving federal financial assistance, to include in writing:

- 1) The price at which the publisher would make the college textbook or supplemental material available to a campus bookstore and, if available, the price at which the publisher makes the college textbook or supplemental material available to the public.
- 2) The copyright dates of the three previous editions of such college textbook, if any.
- 3) A description of the substantial content revisions made between the current edition of the college textbook or supplemental material and the previous edition, if any.

- 4) Whether the college textbook or supplemental material is available in any other format, including paperback and unbound and, for each other format of the college textbook or supplemental material, the price at which the publisher makes such other format available to the public.

Federal HEOA law requires each institution of higher education to:

- 1) Disclose in the institution's Internet course schedule, for each course listed, the ISBN and retail price of required and recommended college textbooks and supplemental materials.
- 2) Make available to a college bookstore the most accurate information available regarding the course schedule and for each course offered the ISBN, retail price, number of students enrolled in the course, and the maximum student enrollment for the course.

Existing state law:

- 1) Requires textbook publishers, by January 1, 2020, to make the textbooks available, in whole or in part, for sale in an electronic format. The electronic version of any textbook must contain the same content as the printed version and may be copy-protected.
- 2) Requires the California State University (CSU) and California Community Colleges (CCC), and encourages UC, to work with their respective academic senates to encourage faculty to give consideration to the least costly practices in assigning textbooks and to work with publishers and college bookstores.
- 3) Requires college bookstores to work with the academic senates of each campus to review the process and timelines involved in ordering and stocking textbooks and to create bundles and packages of instructional materials that are economically sound.
- 4) Urges textbook publishers to provide specific information to faculty and post that information on the company's website, give preference to supplements rather than producing a new edition and disclose the length of time the current edition is intended to be in production.
- 5) Establishes the College Textbook Transparency Act [AB 1548 (Solorio), Chapter 574, Statutes of 2007], which requires:
  - a) Textbook publishers to print on the cover or within each textbook a summary of the substantive content differences between the new and prior editions and the copyright date of the previous edition.
  - b) Textbook publishers to provide, upon a request by adopters, a list of the substantial content differences or changes made between the current edition initially published on or after January 1, 2010, and the previous edition of the textbook, including but not necessarily limited to, new chapters, additional eras of time, new themes, or new subject matter
  - c) Each campus bookstore at any public college or university to post in its store or on its website a disclosure of its retail pricing policy on new and used textbooks.

- d) Each public college or university to encourage personnel responsible for selecting course materials (typically faculty) to place their orders with sufficient lead time to enable the bookstore to confirm the availability of the requested materials.

FISCAL EFFECT: Unknown but potentially significant. The version of this bill that passed the Senate was keyed non-fiscal by Legislative Counsel, but recent amendments changed the designation to fiscal.

COMMENTS: Background. Several reports throughout the last decade have noted the increasing cost of college textbooks. For example, the California State Auditor released a report entitled "Affordability of College Textbooks" (2008) that identified publishers, campus bookstores, and faculty members as responsible parties needing to work together to reduce costs and properly disclose textbook information to students.

In response, California and the federal government enacted laws (see Existing Law above) to provide greater information to faculty and students about textbook prices and options, differences in new editions, and to provide supplements instead of new editions; to encourage the timely adoption of textbooks by faculty; and to ensure faculty to choose lower cost textbook options. A report on the implementation of the federal laws is due in July 2013.

Need for this bill. According to the author, "Given the limited implementation of these policies this bill takes a proactive approach at providing textbook price transparency by ensuring that valuable data, already being provided under requirement of federal law, to be submitted, collected, and organized in a useful and uniform format that will ultimately achieve the intended goal of greater transparency and consequently greater affordability of postsecondary content."

Textbook adoption and purchasing process. Typically, faculty choose textbooks in the academic term preceding the one during which they will use the books to ensure that the campus bookstore can stock textbooks by the first day of a new semester and can procure from the used-textbook market as many available used books as possible. At public and most private independent institutions, students may purchase their books from the campus bookstore. To remain self-supporting and in some cases profitable, campus bookstores apply markups to prices they pay publishers for textbooks. The resulting amounts are the bookstores' retail prices that students pay for textbooks. However, the emergence of Internet book merchants—initially Amazon, followed by Web-based resellers specifically targeting college students such as BigWords, CampusBooks, TextBooks, and others—have increased students' textbook purchasing options. Numerous websites allow a student to enter a book's ISBN to find the lowest price for purchase and rental.

What does this bill do? This bill has 3 components that would do the following and are discussed in greater detail further in the analysis:

- 1) **Publisher data formatting:** Require publishers to provide federally-required information in specified formats that can be used to develop search engines and Web sites. This data would serve as the basis for developing the search engines encouraged/required in this bill.
- 2) **Faculty textbook adoption search engine:** Encourage public and private higher education institutions to provide a faculty textbook adoption search engine that allows faculty or course

coordinators to view, compare and contrast textbooks within a given subject area and to communicate their adoption choices to the appropriate procurement staff and colleagues. If the institution provides this search engine, it must:

- a) See out a third-party entity to create and implement the search engine free of charge.
  - b) Have a warning system for textbook deadlines and costs to students for late adoptions and the consequences related to textbook bundling and customization on student buyback and resale options.
  - c) Produce reports to gauge the timeliness and average cost of textbooks ordered by individual faculty members that, upon approval of faculty is public available as specified.
  - d) Ensure that bookstores provide course and adoption information in an open protocol, as defined, to allow an outside entity free access to the information.
- 3) **Bookstore textbook comparison search engine:** Require institutions' bookstores, including entities to which this function is leased, to provide a student textbook price comparison engine on its Web site that includes the price difference between a textbook purchased through an online competitor, including a link through which the student may purchase a textbook from a competitor.

Publisher data. It is unlikely that publishers from other states would comply with these provisions; thus, only California-based publishers would provide this information. Will this provide enough meaningful information for the search engines to provide complete pricing options for students and faculty? Does the cost of formatting this information put California publishers at a competitive disadvantage? Further, is this provision necessary? The data is publicly available under federal law and can be converted into the specified formats by a third party. In fact, for-profit companies, such as R.R. Bowker, LLC, currently provide this service for a charge.

Faculty textbook adoption search engine. Reports have indicated that timely faculty adoption of textbooks and consideration of price when choosing textbooks are significant factors in textbook affordability. Is a faculty textbook adoption search engine necessary to encourage faculty behavior, or can the institutions implement and enforce policies to this end? Further, there are faculty adoption search engines that are currently available to and used by institutions for this purpose. For example, MBS Textbooks offers this service to their customers free of charge, allowing faculty to see all books and the price of each per subject matter and submit an order to the bookstore. This bill would prohibit institutions from using these tools unless they include specified features.

Bookstore textbook price search engine. State law allows the governing board of any CCC district to establish a bookstore on campus, while state law and or their institutional policies allow UC and CSU to establish auxiliaries (separate, self-supporting entities) to provide supportive services, such as bookstores, for the benefit of the campuses. In some cases, a campus may choose to contract with a private entity to run its bookstore. For example at CCC, 46 campuses contract with a private entities: 28 to Follett Higher Education Group, 17 to Barnes & Noble College Booksellers, Inc., and one to an out of state entity.

- 1) **Effects on existing contracts.** Agreements with private entities may vary from campus to campus. How would institutions that contract for bookstore services comply with these provisions without violating their existing contracts?
- 2) **Can bookstores do this now?** Nothing in state law precludes bookstores from developing textbook search engines. In fact, 24 California colleges and universities, including UCs, CSUs, and CCCs contract with VERBA Software, a Web-based search engine that includes listings from both the campus bookstore and online retailers for used, new, and digital textbooks and materials and provides tools to allow campuses to sample the marketplace to gauge their price competitiveness.
- 3) **Cost and competition.** Providing a textbook price search engine could result in significant costs to the bookstore for both the development of the application and loss in business from textbook sales. Does this provision put bricks-and-mortar bookstores at a competitive disadvantage to online competitors? Since public institutions will be bearing the cost to implement and maintain the search engines, does this bill, in effect, use public resources to subsidize private enterprise? Why aren't existing textbook search engines, such as Amazon, VERBA, etc.?
- 4) **Student protections.** There are no provisions explicitly ensuring the privacy of students who order through these search engines. Could a third party mine the data for student names and purchasing history in order to market its products?

Private institutions. It is unclear to what extent these provision will affect private for-profit institutions, since these institutions vary significantly. The author notes that it is not his intent to cover institutions whose faculty do not adopt individual textbooks.

Federal report. The federal Higher Education Opportunity Act requires the Comptroller General of the United States to report, by July 1, 2013, on the implementation of the requirements imposed upon institutions of higher education, college bookstores and publishers, and particularly examine: 1) the availability of college textbook information on course schedules; 2) the provision of pricing information to faculty by publishers; and 3) the use of bundled and unbundled material. Should we consider the findings of this report before implementing new policy in this area?

Related legislation. SB 1053 (Steinberg), to be heard by this Committee on July 3, would establish the California Digital Open Source Library for the purpose of housing open source materials. SB 1539 (Corbett), which is pending on the Assembly Floor, would require the publisher of a textbook, or an agent or employee of the publisher, to provide prescribed data about the textbook to prospective purchasers. AB 2471 (Lara), which was held on the Assembly Appropriations Committee suspense file, would require public postsecondary institutions and the governing body of each private postsecondary educational institution that offers a baccalaureate degree to adopt policies to prohibit the assignment of an e-textbook unless that e-textbook complies with various provisions.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

None on file.

Opposition

Association of American Publishers, Inc.  
California Association of College Stores  
California Community Colleges Chancellor's Office  
California State University  
Kern Community College District  
Los Rios Community College District  
Mt. San Jacinto Community College District  
Peralta Community College District  
San Diego Community College District  
University of Southern California

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